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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,489	07/30/2003	David W. Plank	6323US	9693
30173	7590	05/05/2005	EXAMINER	
GENERAL MILLS, INC. P.O. BOX 1113 MINNEAPOLIS, MN 55440			DONOVAN, MAUREEN C	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 05/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/630,489

Applicant(s)

PLANK ET AL.

Examiner

Maureen C. Donovan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 8-16 and 18-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-16 and 18-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/7/05 and 3/24/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. This action is in response to communications: Amendment A, filed 03 February 2005.
2. Claims 1-4, 8-16 and 18-25 are pending.
3. Claims 5-7 and 17 have been cancelled.
4. The rejection of claims 9 and 15 under U.S.C 112 second paragraph made in the previous office action mailed 11/02/2004, are withdrawn in light of the arguments filed 03 February 2005. In light of these comments, the examiner agrees that the word "partially" with reference to the degree that the product is baked would have a definite meaning to one of ordinary skill in the art of baking, to which this invention applies. It is agreed that one of ordinary skill in the art of baking would know if a product was only partially baked or fully baked and how to only partially bake a product. It is noted that the skill of partial baking is also found cited in the reference Baking 911, further showing it is a term known by those of ordinary skill in the art.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1,2,4,8,10-14,16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smail et al, US Patent Application Publication 2003/0077361 A1.

Smail discloses a food product treatment, comprising; a cyclodextrin, and a carrier, wherein said composition is supplied in a form of a spray and wherein said food product is a grain or vegetable based food product (see Page 1, sections 0005, 0007, 0011 and Page 2, section 0016 and 0018). Smail discloses that the food product is baked goods (see page 1, section 0005). Smail discloses creating a food product or food intermediate from a grain or vegetable base or derivative; applying a complex containing a cyclodextrin and a carrier; and subjecting said food product or food intermediate to heating of at least 100C (see page 2, section 0018), wherein the step of applying the complex is accomplished by spraying (see page 1, section 0007). Smail discloses a food product or food intermediate having a coating including a cyclodextrin, wherein

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said food product is a grain or vegetable based food product and the food product is a baked good and wherein said food product or food intermediate is provided in a frozen state (see page 2, section 0016). Smail discloses that the coating is topically applied (see page 2, section 0015).

With regard to the claimed recitation that the food product treatment composition or spray coating containing cyclodextrin be “for reducing acrylamide levels in food products” or that the method is for “reducing acrylamide levels in heat treated food products”: The intended use of the spray coating or purpose of the method does not add positive functional limitations on the claims. The coating and method of coating with a cyclodextrin containing composition as disclosed by Smail would inherently act in a manner to reduce the acrylamide levels in the food products even though that is not the explicit purpose for the coating as disclosed by Smail.

With regard to claim 8’s recitation of the processing step of “identifying a food product or food intermediate in need of reduction of acrylamide levels after heating”: This limitation does not further limit the claim language and provides no patentable distinction to the process. The step of “identifying” is a mental processing step, which is not patentable, and further the other processing steps (b-d) can be preformed with no regard as to whether the mental step of identifying was performed. Therefore the process of Smail, still discloses all the features claim 8.

Although Smail does not explicitly state that the cyclodextrin in the food product treatment is present with a carrier, and that that carrier is water, Smail does disclose that the food product treatment may be a liquid in solution or saturated form (see page 1, section 0007). Therefore, one of ordinary skill in the food art at the time of the invention, when producing a liquid solution, as disclosed by Smail would have found it obvious to use water to make the solution. Smail also discloses that the solution can be at 70% or saturated, one of ordinary skill in the food art at the time of the invention would have found it obvious to use water to dilute the saturated solution to a 70% solution.

Applicant's arguments filed 03 February 2005 have been fully considered but they are not persuasive. At page 8 of the response, applicant states that the reference does not disclose a composition that is anticipatory of the present claims and one of ordinary skill would have no motivation to select composition containing cyclodextrins. This is not deemed persuasive.

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It is submitted that Smail clearly discloses using a cyclodextrin with sufficient specificity (see page 1, section 0011). The reason the rejection made above and in the previous office action was formed as an obvious type rejection was regarding the obviousness of one of ordinary skill in the art to choose a carrier of water. The obviousness part of the rejection was therefore not directed towards the cyclodextrin choice, since Smail discloses the use of cyclodextrin with sufficient specificity. Therefore, it is submitted that Smail does disclose using cyclodextrins, and that no further motivation is required.

The applicant notes that the potential compositions of the Honey reference would all not provide the unexpected results that a cyclodextrin provides. However, in order for this argument to have weight, appropriate evidence would be needed to definitively show that the other compositions do not present similar results.

2. Claims 3 and 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smail as applied to claims 1,2,4,8,10-14,16 above and further in view of Smith, US patent number 5,128,161.

Smail discloses all the features of the instantly claimed invention, including a baked goods glaze coating that contains cyclodextrin and can be utilized by spraying the glaze onto baked goods in a mechanized manner (see Page 1, sections 005, 007, 0011 and Page 2, section 0016 and 0018). Smail does not teach packaging the spray glaze.

Smith discloses a spray glaze coating for baked goods that is packaged in an aerosol container (see Column 1, lines 57-62 and Column 2, lines 27-37 and Column 4, lines 56-68 and Column 5, lines 1-12).

It would have been obvious to one of ordinary skill in the art at the time of the invention to put the glaze of Smail into the spray container as disclosed by Smith since both are directed to spray glaze coatings for baked goods, since the container of Smith provides an easy way to apply glaze to the baked goods through spraying (see Column 2, lines 35-36) and since Smail teaches the glaze being sprayed in a mechanized manner but does not specify an exact mechanized manner to use therefore one of ordinary skill in the art, looking to the existing art for mechanized manners of spraying glaze would rely on the Smith reference since an aerosol container as taught by Smith is a mechanized means for spraying. With regards to Claims 19-21, the intended use of

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the spray coating (i.e. for consumer, commercial or food service) appears to be merely functional and does not add a positive limitation on the spray coating and therefore while Smail as modified by Smith does not expressly say that the packaged spray coating is for consumer, commercial or food service use, one of ordinary skill in the art would expect that the packaged spray coating could be used or applied as such, hence it is interpreted that the spray coating as disclosed by Smail as modified by Smith meets the limitations of claims 19-21.

Applicant's arguments filed 03 February 2005 have been fully considered but they are not persuasive. Applicant's arguments concerning the rejections of Claims 3 and 18-21 under 35 U.S.C. 103(a) over Smail in view of Smith reflect the arguments' made against the rejection of Claims 1,2,4,8,10-14,16 under 35 U.S.C. 103(a) over Smail, therefore as the rejection of Claims 1,2,4,8,10-14,16 was maintained above, so is the rejection of Claims 3 and 18-21.

3. Claims 9 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smail as applied to claims 1,2,4,8,10-14,16 above and further in view of Baking 911 online publication.

Smail discloses all the features of the instantly claimed invention except for partially baking the baked goods.

Baking 911 teaches partially baking baked goods and also brushing the baked goods with a glaze after pre-heating the baked good and then returned to the oven for complete baking (see page 3, Basics #8 section, second and third paragraphs). It would have been obvious to one of ordinary skill in the art at the time of the invention to partially bake the baked goods of Smail as taught by Baking 911 and to glaze the baked goods with the glaze as disclosed by Honey after partially baking them as taught by Baking 911 since this would prevent the baked goods from becoming soggy when fully baked and will waterproof the baked goods (see page 3, Basics #8 section, second and third paragraphs).

Applicant's arguments filed 03 February 2005 have been fully considered but they are not persuasive. Applicant's arguments concerning the rejections of Claims 9 and 15 under 35 U.S.C. 103(a) over Smail in view of Baking 911 reflect the arguments' made against the rejection of

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Claims 1,2,4,8,10-14,16 under 35 U.S.C. 103(a) over Smail, therefore as the rejection of Claims 1,2,4,8,10-14,16 was maintained above, so is the rejection of Claims 9 and 15.

2. Claims 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smail as applied to claims 1,2,4,8,10-14,16 above and further in view of Nutra USA publication.

Smail discloses all the features of the instantly claimed invention except for the use of alpha-cyclodextrin specifically or the exact weight percents of alpha, beta and gamma cyclodextrin in the spray composition.

Nutra USA discloses that alpha cyclodextrin is colorless, odorless and has a low viscosity, neutral taste and resistance to browning (see page 1). These benefits of alpha cyclodextrin would have made it obvious to one of ordinary skill in the art at the time of the invention to have used alpha cyclodextrin as the cyclodextrin in the composition of Smail. Additionally, although Smail does not disclose that any one cyclodextrin would be more beneficial than another, and since all three forms were known and readily available, it would have been obvious for one of ordinary skill to have used any combination of alpha, beta and gamma cyclodextrin, depending on their cost and availability. Further, it would have been obvious to one of ordinary skill in the art at the time of the invention to have used the cyclodextrins in a concentration as instantly claimed depending on the size and amount of the food products to be sprayed and the amount of water that was desired to be used. It would not have involved an inventive step for one of ordinary skill in the art to make a cyclodextrin solution more or less concentrated, since a more concentrated solution would be desired when spraying a large area of food products in order to save money on water, and a less concentrated solution would be desired when spraying a small area of food products.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

As was recognized by the applicant in the reply filed 03 February 2005, the previous Office Action referred to section numbers in this US patent application publication and mistakenly cited them as being from the GB document to which the patent application claims priority. As the text of the two documents are the same and since the applicant recognized the mistake and correctly referred to the patent application publication, it is deemed that the applicant was informed of the use of this reference in the previous office action and the Office Action can still appropriately be made final.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maureen C. Donovan whose telephone number is (571) 272-2739. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


KEITH HENDRICKS
PRIMARY EXAMINER